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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,229	06/25/2001	Richard Ian Christopherson	DAVI139.001A	2287

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EXAMINER

LY, CHEYNE D

ART UNIT PAPER NUMBER

1631

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/869,229	Applicant(s) CHRISTOPHERSON ET AL.	
	Examiner Cheyne D Ly	Art Unit 1631	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 58-71.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 3. NOTE: The claim amendment raises new issues that would require further consideration and/or search. For example, the limitation of "enable...pattern of density" in claim 58, lines 9-10 would require further consideration and/or search. Further, the amendment to claim 58, lines 9-10, raises the issue of new matter because the amendment does not provide written basis for the new limitation. Therefore, the claim amendment, filed February 04, 2005, will not be entered.

Continuation of 11. does NOT place the application in condition for allowance because:

Claims 58-71 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. NEW MATTER REJECTION.

This rejection is maintained with respect to claims 58-71, as recited in the previous office action mailed January 12, 2005.

On pages 6-7, Applicant argues that the claims as amended have overcome the instant rejection. Applicant's argument has been fully considered and found to be unpersuasive. Specific to claim 71, the amended limitations have written basis support on page 50, lines 11-15 as pointed to by Applicant. However, the instant rejection has been maintained because of the non-entry of the claim amendment as discussed above.

Claims 58-70 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Yoshinari et al. (1996).

This rejection is maintained with respect to claims 58-70, as recited in the previous office action mailed January 12, 2005.

On pages 8-9, Applicant argues that Yoshinari et al. fail to teach each and every element of the instant claimed assay device. Applicant's argument has been fully considered and found to be unpersuasive because of the non-entry of the proposed claim amendment. Specific to Applicant's argument that "Yoshinari et al. simply do not teach or suggest..., which bind to different cell surface antigens on the same cell", the limitation of "different cell surface antigens on the same cell" is not recited in the claims, filed October 12, 2004, or the proposed amended claims.

Claims 58-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshinari et al. (1996) in view of Pestronk et al. (1997).

This rejection is maintained with respect to claims 58-71, as recited in the previous office action mailed January 12, 2005.

On pages 9-12, Applicant argues that Yoshinari et al. alone or in combination with Pestronk et al. fail to teach or suggest the subject matter of the pending claims. Applicant's argument directed to Yoshinari et al. has been addressed above. Specific to the argument that "the PTO has not established a prima facie case of obviousness", Yoshinari et al. describes an improvement for generating antibodies by overcoming the difficulties of immobilization on glass slides by using a cells ELISA (page 359, column 1, 1st paragraph, and page 360, column 2, last paragraph). An artisan of ordinary skill in the art at the time of the instant invention would have been motivated by the improvement described by Yoshinari et al. to improve on the device of Yoshinari et al. by using the ELISA with covalent linkage. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to use the assay device of Yoshinari et al. and Pestronk et al. Specific to claim 71, Applicant argues that Pestronk et al. does "not provide motivation,...to covalently bind an array of immunoglobulins to a solid surface." It is noted that the proposed amended claim, which has not been entered, recites "immunoglobulins...bound covalently to the solid support" which is different from the argued limitations. Further, Applicant's argument has been found to be unpersuasive because of the non-entry of the claim amendment as discussed above.

Ardin H. Marschel 2/22/05
ARDIN H. MARSCHEL
PRIMARY EXAMINER